



Kentucky Law Journal

Volume 35 | Issue 2

Article 7

1947

Executive Committees of Private Corporations

Frank Selby Hurst
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Business Organizations Law Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Hurst, Frank Selby (1947) "Executive Committees of Private Corporations," *Kentucky Law Journal*: Vol. 35 : Iss. 2 , Article 7.
Available at: <https://uknowledge.uky.edu/klj/vol35/iss2/7>

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

EXECUTIVE COMMITTEES OF PRIVATE CORPORATIONS

An executive committee of a corporation is a group, usually composed of a small number of the directors of the corporation, whose purpose is the management of certain affairs of the corporation. The powers exercised by the executive committee are generally those which, in the absence of such a committee, would be exercised by the board of directors of the corporation; and as a rule, the powers of the committee are decided upon and delegated to that body by the board of directors. A few early cases suggested that the powers vested in the directors could not be delegated but had to be exercised by the body to which they were given, or not at all.¹ It has been suggested that such a position as is taken by these cases could be based on the generally recognized theory that an agent cannot delegate authority which has been delegated to him.² But whatever may have been the basis of these early decisions, the almost universal rule today is that the board of directors may delegate powers to an executive committee.³ This rule has been given recognition in several states by the enactment of statutes to that effect.⁴

The means of providing for the executive committee, in the absence of a statutory requirement, seem to be largely discretionary with the corporation. The courts have recognized the validity of executive committees which were authorized by the corporation's charter,⁵ by the by-laws of the corporation adopted by the stockholders,⁶ and by both the charter and by-laws of the corporation.⁷ In one case, the court even recognized a committee created by a resolution of the board of directors of the corporation, without additional authority from the charter or the by-laws.⁸ In this particular case, the committee was to control the business of two newspapers which were owned by the corporation. Thus it would seem that today there is almost no problem as to the right to create an

¹ *Tempel v. Dodge*, 89 Texas 69, 32 S. W. 514 (1895). See, *Gillis v. Bailey*, 21 N. H. 149, 162 (1850).

² STEVENS, CORPORATIONS (1936) sec. 139.

³ *Lawrence v. Atlantic Paper and Pulp Corp.*, 298 Fed. 246 (1924); *Halderman v. Halderman*, 176 Ky. 635, 197 S. W. 376 (1917); *Wallace v. International Trade Exhibition*, 170 La. 55, 127 So. 362 (1930); *Wisconsin Town Mutual Reinsurance Co. v. Calumet County Mutual Fire Insurance Co.*, 224 Wis. 109, 271 N. W. 51 (1937).

⁴ REVISED CODE OF DELAWARE (1935) sec. 2041; ILLINOIS REVISED STATUTES (1937) chap. 32, sec. 157.38; LOUISIANA GENERAL STATUTES (DART, 1939) sec. 1114 (IIIe); REVISED STATUTES OF NEW JERSEY (1937) sec. 14: 7-4; PAGE'S OHIO GENERAL CODE (1937) sec. 8623-60.

⁵ *Lawrence v. Atlantic Paper and Pulp Corp.*, 298 Fed. 246 (1924); *Wallace v. International Trade Exhibition*, 170 La. 55, 127 So. 362 (1930).

⁶ *Young v. Canada, A. & P. S. S. Co.*, 211 Mass. 453, 97 N. E. 1098 (1912).

⁷ *Tilden v. Goldy Mach. Co.*, 9 Cal. App. 9, 98 Pac. 39 (1908).

⁸ *Halderman v. Halderman*, 176 Ky. 635, 197 S. W. 376 (1917).

executive committee, or as to the means to be used in authorizing the creation of such a committee.

The principal question in regard to executive committees has to do with the extent to which the board of directors of a corporation may delegate its powers to them. Frequently the by-law or charter which provides for the creation of the executive committee says that the committee may exercise the full powers of the board of directors,⁹ or may exercise all of the powers of the board of directors in the management of the business.¹⁰ The normal interpretation of such a provision probably would be that the executive committee was authorized to perform any function of the board of directors. But such is not the interpretation which the courts place on these provisions.

The courts generally recognize the power of such executive committees to perform only those discretionary functions of the board of directors which will not alter the policy or operation of the corporation to a very great extent. Such functions include the fixing of the compensation and salaries of the officers and employees of the corporation by whom the current business is transacted,¹¹ the issuing or indorsing of notes for loans needed to conduct the normal business of the corporation,¹² and the engaging of employees necessary for carrying on the current business of the corporation.¹³

However, the courts do not allow executive committees, where they are not specifically authorized so to act, to exercise powers by which they could change the policy or operation of the corporation. On this theory it has been decided that an executive committee cannot remove officers elected by the board of directors during the terms for which they were elected,¹⁴ or issue stock certificates,¹⁵ or amend the by-laws of the corporation,¹⁶ or remove a member of the committee by a majority vote.¹⁷ But when the executive committee is specifically authorized to exercise some extraordinary power, the courts usually recognize the committee's authority. Thus in one case in which the board of directors adopted a resolution authorizing the committee to determine the action to be taken to pro-

⁹ *Young v. Canada, A. & P. S. S. Co.*, 211 Mass. 453, 97 N. E. 1098 (1912).

¹⁰ *Lawrence v. Atlantic Paper and Pulp Corp.*, 298 Fed. 246 (1924).

¹¹ *Wallace v. International Trade Exhibition*, 170 La. 55, 127 So. 362 (1930).

¹² *Tilden v. Goldy Mach. Co.*, 9 Cal. App. 9, 98 Pac. 39 (1908).

¹³ *Young v. Canada, A. & P. S. S. Co.*, 211 Mass. 453, 97 N. E. 1098 (1912).

¹⁴ *Fensterer v. Pressure Lighting Co.*, 85 Misc. 621, 149 N. Y. Supp. 49 (1914).

¹⁵ *Ryder v. Bushwick R. Co.*, 134 N. Y. 83, 31 N. E. 251 (1892).

¹⁶ *Hayes v. Canada, Atlantic and Plant S. S. Co.*, 181 Fed. 289 (1910).

¹⁷ *Ibid.*

tect the corporation's creditors, whether by assignment for the benefit of creditors or by filing a voluntary petition in bankruptcy, the court held that the executive committee had the power to file a voluntary petition in bankruptcy.¹⁸ In another case a committee was created by an insurance company to help organize a reinsurance company and to bind the committee's company as a policyholder of the reinsurance company; the court held that an insurance contract entered into by the reinsurance company and the committee was binding on both companies.¹⁹

In summary, then, it may be said (1) that a corporation may provide for an executive committee by charter, by by-law, or by resolution of the board of directors; (2) that the function of such a committee is to exercise certain powers of the board of directors; (3) that in the absence of specific authority, the powers of the committee are limited to those acts which will not bring about any great change in the policy or operation of the corporation; (4) that the committee may perform substantially any function of the board of directors if it is specifically authorized to so act.

FRANK SELBY HURST

¹⁸ *Lawrence v. Atlantic Paper and Pulp Corp.*, 298 Fed. 246 (1924).

¹⁹ *Wisconsin Town Mutual Reinsurance Co. v. Calumet County Mutual Fire Insurance Co.*, 224 Wis. 109, 271 N. W. 51 (1937).